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A PRACTICAL VIEW
OF
THE MINING LAWS
OF
BRITISH COLUMBIA.

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A
PRACTICAL VIEW
OF
The Mining Laws
OF
BRITISH COLUMBIA,
BY
JOSEPH PARK,
OF THE MIDDLE TEMPLE, ESQ.,
BARRISTER-AT-LAW.

VICTORIA, V. I.
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A PRACTICAL VIEW OF THE Mining Laws of British Columbia.

CHAPTER I.—Who may become Free Miners.

CHAPTER II.—The Free Miner's Certificate.

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Words.

INTRODUCTORY REMARKS.

During the past mining season at Cariboo, a want was universally felt of some work in the nature of instructions, rather than rules, to the miners in their various mining operations ; this was rendered the more necessary as the mining Proclamations and Rules and Regulations seldom found their way in a complete state into the hands of miners.

The recent ordinances have rendered this want the more pressing, as by repealing and re-enacting different clauses, in the numerous Proclamations, Rules and Regulations, it has become a matter of great intricacy to sift out the meaning of many of the Rules ; this has been by the present work rendered more easy, and all requisite heads with the different clauses applicable thereto, omitting the repealed ones, have been placed in separate chapters, so as to render the practical miner at once conversant with the particular portion of mining law he is in quest of.

The laws respecting Bed Rock Flume and Mining Drains are a very great and satisfactory feature in the new ordinances, and also in the advance of mining, and great results may be confidently look to from these provisions if energetically carried out.

The advantages to be derived from Bed Rock Flumes are easily apparent so far as regards the effectually extracting the Gold from Creeks which have been abandoned as impracticable by individual or companies of miners, from excess of water, quicksand, boulders and other of the many difficulties the miner has to contend against, and all ground will by their assistance be rendered easily workable.

The water, which to the individual miner is one of the greatest drawbacks, will assist rather than deter their operations.

The perfect drainage too obtained by the uninterrupted flow of water down the different creeks on which Bed Rock Flumes are worked, will much assist the miner whose claim is situated on the sides of the different flumes and render the extracation of the auriferous metal more easy, having the necessary hydraulic power so easily available will be a saving of much expense and labor, as it renders unnecessary the working of ditches and bringing of water from a distance, in consequence causing the working to be much more remunerative to the miner. This will bring into immediate working many portions of mining grounds hitherto neglected from the want of these advantages: to the Flume companies the result will be equally profitable, as after their first outlay the labor required to work is comparatively small, the great portion of the work being done by water and the numerous individual claim holders on the margin of their flumes will add their quota to the deposit of gold.

The mode of collecting assessments and the partnership clauses are clauses of great importance, and go far to establish mining interests on a firm

basis, the foremen of the companies have hitherto been put to much trouble, expense and loss of time in collecting these assessments ; and it is worthy of suggestion to companies whether it is not better to place their assessments for collection and their books to be made up, immediately after their weekly or fortnightly assessment has been made, in the hands of some practical man engaged in that occupation, and thereby save the great loss they have hitherto sustained from the absence of the foreman, loss of labor and of his supervision, which is doubly necessary ; the company's accounts would then be easily available to all members of the company and would enhance the confidence of the public at large in their undertaking.

Though the introduction of Bed Rock Flume Companies is a great improvement in mining in British Columbia, still if the different companies in the mining districts of Cariboo, where the first outlay for work is so great, were carried on on the joint stock principle, it would add materially to the stability of the companies, and open a gate for the easy influx of capital, a desideratum which would afford an easy and safe investment to the capitalist.

With every confidence in the success of the coming season, the present work is placed in the hands of the miner to enable him at a glance to obtain the law he is in search of, and as far as possible keep him clear from the quick-sands of litigation.

VICTORIA, APRIL, 1864.

CHAPTER I.

WHO MAY BECOME FREE MINERS.

All persons above the age of sixteen years may become Free Miners.

Prior to the recent Ordinance, it has been the custom to take up shares, and hold the same, in the names of children and married women. This seems to have been entirely at the risk of the persons doing so, and contrary to all rules of law, on account of the disabilities under which infants and married women labor.

These disabilities, with respect to infancy, have now partially been removed, and persons above the age of sixteen years are now in the same position as Adult Free Miners, and they are subject to the same rules, and enjoy the same rights, as adults ; but no person under the age of sixteen years is capable of holding any claim or interest therein.*

With regard to married women, no law has ever been made especially for them, and the mistake as regards their right to hold claims may have arisen from the statement in the 1st Section of the Proclamation of 1859, where it is stated that "Words in

*Ord. 1864, sec. 28.

the masculine gender shall include the feminine;" but as the law clearly implies a contract on the part of any person taking up or holding a claim to work the claim in a minerlike manner, and not to damage or obstruct the work of others, married women, being incapable from their inability to contract, are unable to enter into such a contract. There is very great doubt whether either a married woman, or her husband, are in any way responsible for any contract for labor or other contract on account of a claim so held. The interest in a claim, having been now defined to be equivalent to a lease for a year,* it would be as improper for her to take such an interest as it would such a lease, and this will make the risk the greater to the parties so holding. It has also been decided that a *feme covert* cannot sustain the character of a partner, although she or her husband may be beneficially interested in the profits of the concern. (9 Ves., 500.)

CHAPTER II.

FREE MINER'S CERTIFICATE.

The first step for the person wishing to become a Free Miner, is to obtain a Free Miner's Certificate; and the course to be adopted is to go to the office of the Gold Commissioner and apply for the same, when on payment of the fee of One Pound it is readily granted.

*Ord. 1864, sec. 46.

This is of great importance, as by the new Ordinance extending and improving the mining laws, that portion of Clause 7 of the Gold Fields Act, 1859, which had been repealed, has been re-enacted, namely: that "No person shall be recognised as having any right or interest in or to any claim, or ditch, or any gold therein, unless he shall be, or in case of disputed ownership, unless he shall have been at the time of the dispute ensuing, a Free Miner."

The Certificate is generally printed, and is in the form given by the Proclamation of 1859.† It continues in force for twelve months from the date thereof; it is not transferable, and the name of one person only is to be inserted in each such certificate.‡

The certificate must be countersigned by the Free Miner before being produced by him for any purpose; and when such certificate is applied for by the miner in person, the same should be signed by such miner before being signed by the Gold Commissioner.||

Every Free Miner has, during the continuance of his certificate, the right to enter without let or hindrance upon any of the unoccupied waste lands of the Crown and to mine therein.§

The Gold Commissioner, at the time of issuing the certificate, records its date, and the number and name of the Free Miner, and whether the same was issued in person or to another.*

†Proclamation 1859, sec. 3.

‡Proclamation 1859, sec. 4.

||Ib., sec. 4. §Ib., sec. 5. *Ib., sec. 9.

If any Free Miner's certificate be accidentally destroyed or lost, the same may, upon evidence thereof, be replaced by a new certificate bearing the same date.*

Any person wilfully damaging or destroying any miner's certificate, or fraudulently filling up or post dating or altering any name or date, or who shall falsely pretend that he is the person named in such certificate, is guilty of felony, and on conviction is liable to penal servitude for not more than ten years.†

CHAPTER III:

WHAT ARE MINING CLAIMS AND INTERESTS.

The different description of mining property may be divided into two, namely : Mining Claims proper, and Mining Interests.

Mining Claims may be divided into and included under the following heads :

1. Creek Claims.
2. Hill or Tunnel Claims.
3. Quartz Claims.
4. Bar Diggings.
5. Bench Diggings.

Mining Interests—not being, strictly speaking, Claims—into the following :

1. Bed Rock Flumes.
2. Ditch and Water Privileges.

*Procl. 1859, sec. 10. †Ib., sec. 39.

3. Mining Drains.

4. Leases of larger proportions of mining ground than Claims.

All mining claims and interests are subject to public rights of way and water.*

MINING CLAIMS.

1. A Creek Claim may be defined to be a parcel of ground taken up on the alluvial banks, or flats, which lie on each side of a river or stream; they may be selected from the land lying on either side of, and as near or as far from the stream, as the miner's judgment may lead him to think the most probable place, either from the change of current or from other circumstances, to be productive of gold. It consists of 100 feet square to each miner.†

2. Hill or Tunnel Claims are situate on the side or rise of the hills or banks which run along the side of the creek, and are at a greater or less distance from the creek, according to the breadth of the alluvial banks or flats which lie on each side of the creek. In these claims, or other hill claims, the owner is allowed a frontage of 100 feet, irrespective of depth.‡

But as soon as pay is struck in paying quantities, they must confine themselves to 100 feet for each miner, but are allowed to mark 100 feet ahead of the spot where gold in paying quantities is found.§

The right to the tunnel, and ten feet of ground on either side of it, in addition to the above, shall be

*Rules Jan. 6, 1860, sec. 5.

†Rules Feb 24, 1863, sec. 2. 1lb.

‡Rules Feb. 24, 1863, sec. 2.

considered as appurtenant to the claim to which it is annexed, and be abandoned or forfeited by the abandonment or forfeiture of the claim itself.*

3. A Quartz Claim is taken up where a lode or vein of gold is discovered in a strata of quartz; it follows the lode or vein, and is in length 150 feet, measured along the lode or vein, with power for the miner to follow the lode or vein, and its spurs, dips and angles, anywhere in or below the surface included between the two extremities of such length of 150 feet, but not beyond 100 feet in a lateral direction from the main lode or vein along which the measurement is taken.†

4. Bar Diggings are that portion of the banks of a river over which the river in its most flooded state extends, and are included between high and low water marks. The size of a claim for bar diggings is a strip of land 100 feet wide at the mark to which the river rises when flooded, along such high water mark, and thence extending down direct to the river, to the lowest water level.‡ These claims are chiefly confined to large rivers like the Fraser, Thomson, Stieken and others.

5. Bench Diggings are situate on the high level benches lying on either side of the large rivers, and the following is the size of the claim allowed to each miner:—100 feet square, or else a strip of land 25 feet wide at the edge of the cliff next the river, and bounded by two straight lines, carried as nearly as possible in each case perpendicular to the general direction of the cliffs in the rear of the benches, or

*Rules Feb. 24, 1863, sec. 2.

†Rules Feb. 24, 1863, sec. 2.

‡Rules Feb. 24, 1863, sec. 2.

to the general slope of the mountains in the rear, across the level bench up to and not beyond the foot of the descent in the rear, and in such last-mentioned case the space included between such two boundary lines when produced over the face of the cliff in front, as far as the foot of such cliff and no further ; and all mines in the space so included shall also form a part of such claim.*

As to mining claims of any denomination where the pay dirt is thin, or claims in small demand, or where, from circumstances he may deem reasonable, the Gold Commissioner may allow the miner to register two claims, and allow such period as he may think proper for non-working either. A Discovery Claim may be one of these.†

A Discovery Claim arises where any Free Miner, or party of Free Miners, discover a new mine, the first discoverer or party of discoverers, if not more than two, are entitled to a claim each double the usual size ; if three, to five claims of the usual size ; and if four or more, to a claim and a-half per man.‡

MINING INTERESTS.

1. Bed Rock Flumes are either the property of and held by companies or private individuals ; they may be considered as rather a requisite for the advantageous working of the claims than constituting claims themselves. They may be, however, correctly described as Mining Interests.

Rules Jan. 6, 1860, sec. 2.

Id., sec. 4.

Rules Sept. 7, 1859, sec. 4.

They originate in grants, from the Gold Commissioner, to certain Free Miners, above the number of three, to enter upon land in any creek, and lay flumes in the bed of the stream for the purpose of taking out the gold. They are granted for a term of years not exceeding ten.*

Private Bed Rock Flumes are put in by individual claim holders to connect with the flumes put in by Bed Rock Flume Companies; and such individual claim holders, after the Bed Rock Flume has been extended through their respective claims, have the right to become members of the Bed Rock Flume Company, taking a proportionate interest, or they can work their ground on their own account, at their option.†

2. Ditch, or Water Privileges, are grants either to companies or individuals of the exclusive right of constructing ditches or water courses for the purpose of conveying water to claims, and of charging a certain rent for such water. They are a permanent property, and are under the control of the Gold Commissioner.

3. Mining Drains are grants from the Gold Commissioner to private individuals, or companies, to enter on land for the purpose of making drains to carry off the water from shafts, and other portion of claims; they are empowered to take certain tolls from all persons using or, in the opinion of the Gold Commissioner, benefitted by such drains.‡

4. Leases of a greater proportion of mining ground than claims, can only be granted by the

*Ord. 1864, sec. 9.

†Ord. 1864, sec. 20.

‡Ord. Feb. 1, 1864.

Governor, for the time being, of the Colony, for the purpose of mining. They will not be granted in general for a longer term than ten years, or for a larger space than ten acres of alluvial soil, or half a mile in length of unworked quartz, or in bar diggings half a mile in length along the high water mark, or a mile and a half when the same has been attempted and abandoned.*

CHAPTER IV.

OF THE MODE OF OBTAINING CLAIMS BY PRE-EMPTION.

The following remarks will be some guide to the Free Miner in laying out his claim :

In laying out creek and other claims, where the amount of ground allowed to each free miner is 100 feet square, the claims should be as nearly as may rectangular in shape, and marked by four pegs at the least; each peg to be four inches square at the least.† The boundary pegs are not to be concealed, or moved, or injured, without the previous permission of the Gold Commissioner.‡

This provision should be carefully attended to, as it is a very necessary one, and one which from being neglected has led to much litigation. There is now no distinguishing number required to be marked on these pegs, as by the recent Ordinance § the provision requiring the same has been repealed.

*Rules 7th Sept., 1859, sec. 20.

†Rules Sept. 7, 1859, sec. 2. ‡Ib.

§ Ord. 1864, sec. 40.

In measuring all claims, the measurements of area are to be made on the surface of the earth, neglecting inequalities.*

The practice hitherto in staking out claims has been to place the name of the free miner, either taking up or holding the claims, together with the number of the free miner's certificate, on the pegs or boundary posts. and it is still prudent to do so, though there does not appear to be any express enactment requiring it.

In laying out Tunnel or Hill Claims the course to be adopted should be to draw a base line of 100 feet where the claims are situate on the banks of or fronting on any natural channel, stream, ravine or other water course ; such base line is to be drawn parallel to the channel of the stream on which the claims are located, such base line to constitute the frontage of such claim, and to be marked by posts of the legal size placed at intervals of 100 feet ; lines drawn at right angles with this base line are to constitute the side lines or divisions between the claims,† and are to be distinctly marked off by two parallel lines or rows of pegs, fixed in the ground at intervals of 50 feet or thereabouts; such boundaries or parallel lines shall be carried in a direction as straight as possible to the summit level.‡

The Gold Commissioner has power to refuse to record any hill or tunnel claim on any creek, which claim, or any part thereof, shall include or come within 200 feet of any gulch or tributary of such creek.§

*Rules Sept. 7, 1859, sec. 3.

†Ord. 1st '64, sec. 6.

‡Rules Feb. 24, 1863. §Ord. 1864, sec. 7.

In laying out Quartz Claims no particular mode is provided for fixing the posts, but the 150 feet allowed by law to each miner should be marked out distinctly by posts of the usual size indicating the two extremities of the lode or vein.*

Each pre-emptor must leave three feet unworked, to form a boundary line between his claim and that of the last previous claimant, and shall stake out his claim accordingly, not commencing at the boundary peg of the last previous claimant, but three feet further on.†

In Bar Diggings, the best course would be to mark the two extremities of the line running along the high water level of the river with the usual posts, and also the two extremities of the line on the margin of the stream.

In Bench Diggings, the mode adopted in marking out hill or tunnel claims would be most appropriate, where the front is taken at 25 feet, and running back to the cliff or rise of the hills ; but if the claim consists of 100 feet square, then mark the same at each corner, with the usual posts, in the manner mentioned for laying out creek claims.‡

Where miners work in company, and join their claims together, it seems to be requisite, though this appears to have been greatly neglected, that every individual claim, whether part of a company claim or not, shall be staked out with four corner pegs of the usual size.§

The miner, having thus marked out his claim,

*Rules Feb., 1863.

†Rules Sept. 7, 1859, sec. 16.

‡Ante Page 16.

§Rules Feb. 24, 1863.

takes his description to be recorded in the manner
pointed out in the Chapter on Registration.

CHAPTER V.

OF THE NATURE OF THE ESTATE AND INTEREST IN MINING CLAIMS.

The amount of interest which a Free Miner has in a claim is, save as against Her Majesty, her heirs and successors, deemed to be taken to be a chattel interest, equivalent to a lease for a year, renewable at the end of the first and every subsequent year, subject to the conditions as to forfeiture, registration, working, representation and otherwise for the time being in force.*

Such Free Miner has the exclusive right to take the gold and auriferous soil upon or within the claim; and the exclusive right of entry on the claim, for the purposes of working or carrying away such gold or auriferous soil or any part thereof; and also, as far as may be necessary, for the convenient and miner-like working and security of his flumes and property of every description, and for a residence; but he has no surface rights therein for any other purpose, unless specially granted.†

In addition to the above, the Gold Commissioner may, when deemed advisable, mark out a space in the vicinity for deposit of leavings and deads from any tunnel‡ or shaft; and in no case must the deads

*Ord. 1864, sec. 45.

†Rules Feb. 24, 1863. ‡Rules Feb. 24, 1863.

or leavings, forkings from sluices, waste dirt or large stones or tailings, be allowed to accumulate so as to obstruct the natural course of the stream.*

The Free Miner is also entitled to the use of so much of the water flowing naturally through or past his claim, as not already lawfully appropriated,† as shall in the opinion of the Gold Commissioner be necessary for the due working thereof.‡

In case of the death of any Free Miner holding any claim, or interest, the same is not open to the occupation of any other person for non-working or non-representation, either after his death, or during the illness preceding the same.§ The Gold Commissioner has full power either to represent or sell the same, as he may think just.||

Any Free Miner can sell, mortgage, transmit, or dispose of any number of claims or interests therein lawfully held or acquired by him, whether by pre-emption or purchase.¶

In case of a sale or mortgage of any claim, the full *bona fide* price or consideration must be set forth in the conveyance, mortgage, or other document, conveying or assigning the same, otherwise such sale or mortgage will be void.**

No transfer of any claim or interest therein is enforceable unless the same or some memorandum thereof shall be in writing, signed by the party sought to be charged, or by his lawfully authorised

*Ord. 1864, sec. 27.

†Ib., sec. 37.

‡Procl. March 28, 1863, sec. 3.

§Ord. 1864, sec. 46.

||Ord. 1864, sec. 47, 48, 49, 50.

¶Ord. 1864, sec. 45.

**Ord. 1864, sec. 52.

agent, and registered with the Gold Commissioner * It is now, therefore, requisite that greater care should be taken in the preparation of all conveyances, mortgages and other assurances than has been hitherto given to the preparation of these documents. The forms hitherto used for conveyances and assignments of mining interests are altogether informal, and have more than once called forth remarks from the Chief Justice, which, however, have been as yet disregarded.

CHAPTER VI.

ON BED ROCK FLUMES.

Before making application to the Gold Commissioner for a grant, it is requisite that three or more Free Miners should constitute themselves into a Bed Rock Flume Company.† and at the time of making the application they must mark out the ground contained in the application by square posts firmly fixed in the boundaries of their land, and four feet above the surface, with a notice thereon that such land has been applied for, stating when and by whom, and shall also fix upon a similar post, at each of the nearest places on which miners are at work, a copy of such notice, and also put up a notice of such application in some conspicuous part of the town, place, or at the Court House nearest the locality.

*Rules Sept. 7, 1859, sec. 6.

†Ord. 1864, sec. 10.

applied for, at least five clear days before making such application.*

Where any portion or part of any river, creek, gulch, ravine or other water course intended to be taken by such company, shall have four or more free miners per mile legally holding any *bona fide* working claims on such stream or other water course, it is requisite for the company locating any portion of such stream, to have their location carefully surveyed, and a post with a square top driven securely into the ground upon the lower line of each such claims, within such company's limits, and shall at the time of setting up such posts give notice to the holder of each such claims, in writing, of the distance in feet and inches at which such company's flume will strike such miner's claim, or perpendicularly below the top of such post, and the number of inches grade which each flume has in each 100 feet.†

The foregoing seem all the preliminary requisites before the application for the grant, which, if there be no opposition thereto, will be made by the Gold Commissioner, subject to such conditions as the mining interests in his district may render advisable.‡

Individual or private claim holders are entitled to put in Bed Rock Flumes, to connect with flumes put in by Bed Rock Flume Companies; but they must maintain the like grade, and build their flumes as thoroughly and of as strong materials as are used by bed rock flume companies; and such individual or company claim holders, after the bed rock flume

*Ord. 1884, sec. 23. Rules 7th Sept., 1889, sec. 24.

†Ord. 1884, sec. 17.

‡Ord. 1884, sec. 9.

has been extended through their respective claims at their own expense, have the right either to unite with the bed rock flume company, or work their ground on their own account.* They are, however, subject to the same rules with regard to cleaning up the flumes, repairs, and other matters, as may be adopted by the flume companies.†

Private individuals, putting in bed rock flumes, may at any time abandon their respective claims and have the right to at once proceed to clean up their portion of such flume, or wait till the flume company cleans up, and then take all gold which may be found in their portion of the flume.‡

Bed rock flume companies must measure off their ground, set up their stakes, post their notices, and register their claims in the same manner as individual free miners are required to do; and shall pay £5 sterling per annum in addition to the registration fee, for each half mile of claim and right of way legally held by such company.§

Bed rock flume companies, when duly authorised by the Gold Commissioners, have power to enter upon any river or other water course for the purpose of laying or constructing a bed rock flume therein.|| They are also entitled to enter upon any new and unworked river, creek or other water course, and locate a strip of ground 100 feet wide and 200 feet long in the bed of the stream, to each man of the persons constituting such company, and

*Ord. 1864, sec. 19, 20.

†Ord. 1864, sec. 24.

‡Ord. 1864, sec. 25.

§Ord. 1864, sec. 23.

||Ord. 1864, sec. 11.

shall have and enjoy the right of way, from their upper line, to extend their said flume for a further distance of five miles up the stream, in the bed thereof, provided that such company shall, for each of the men constituting the same, construct or lay at least 50 feet of the flume during the first year, and 100 feet annually thereafter.*

They are also empowered to enter upon any river, creek or other water course which may have been worked by miners and abandoned, and locate the entire bed of such stream, 100 feet in width and one-half mile in length, for each one of the free miners constituting such company, and shall possess the exclusive right to work the ground so located.†

"Abandoned Ground" is construed to include all new and unworked ground outside of claims actually held and worked.‡

At the end of each month, or such further time as the Gold Commissioner may allow, after service of the requisite notices, where any portion of a river or water course has four or more free miners per mile legally holding any *bona fide* claims, such flume companies are empowered to enter upon any claim or claims, situate within such company's limits, and open a cut and lay a bed rock flume through such claim or claims, in case the owner or owners thereof shall have failed in the meantime to open their respective claims and lay bed rock flumes therein.§

In such case the holder or holders of such claims so entered on shall be entitled to all gold taken

*Ord. 1864, sec. 11.

†Ord. 1864, sec. 14.

‡Ord. 1864, sec. 11.

§Ord. 1864, sec. 18.

from the cut and bed rock, in opening such cut and laying the flume therein.*

In case any free miner shall enter upon, take up, and legally work any ground above the claims of the bed rock flume company, and within the limits of their right of way, such company is entitled to enter upon such claims and cut a channel and lay their flume through such claims. The owner of such claims being entitled to the gold taken out of the cut or channel.†

Free miners holding claims on any stream where a bed rock flume has been constructed, are entitled to tail their sluices, hydraulics and ground sluices into such flumes; but so, nevertheless, as not by rocks, stones, boulders, or otherwise unnecessarily to obstruct the free working of the flume.‡

Bed rock flume companies are entitled to the use and enjoyment of so much of the unoccupied and unappropriated water of the stream or streams on which they may be located, and of other adjacent streams as may be necessary for the use of their flumes, hydraulic power and machinery to carry on their mining operations; and have the right of way for ditches and flumes to convey such water to their works, they being liable to any other parties for any damage which may arise from running such ditches or flumes through or over their ground.§

Bed rock flumes, or any interest or interests therein, and all fixtures, are personal property, and can be sold, mortgaged or otherwise dealt with as such.||

*Ord. 1864, sec. 18. †Ord. 1864, sec. 12. ‡Ord. 1864, sec. 13.

§Ord. 1864, sec. 21. ||Ord. 1864, sec. 22.

CHAPTER VII.

OF DITCH AND WATER PRIVILEGES.

The person or persons desiring any exclusive ditch or water privileges, must make application to the Gold Commissioner having jurisdiction for the place where the same shall be situated, stating the name of every applicant, the proposed ditch head, the quantity of water, the proposed locality of distribution, and if such water shall be for sale, the price at which it is proposed to sell the same the general nature of the work to be done, and the time within which such work shall be complete.*

Every applicant for the exclusive grant of any surplus water must in addition affix a written notice of all the particulars of his application upon some conspicuous part of the premises to be affected by the proposed grant for not less than five days before recording the same.†

The rent to be paid for any water privilege, unless otherwise specially arranged, is in each month one average day's receipts from the sale thereof, to be estimated by the Gold Commissioner, with the assistance, if he shall see fit, of a jury.‡

The owners of any ditch, or water privilege, or mining right, must at their own expense construct, secure and maintain all culverts necessary for the passage of waste and superfluous water flowing through or over any such ditch, water privilege or right, except in cases where a natural stream or river

*Rules Sept. 7, 1859, sec. 7.

†Rules Sept. 7, 1859, sec. 7.

‡Rules Sept. 7, 1859, sec. 8.

applicable or sufficient for the purpose exists in the immediate vicinity.*

Such owners—not being the Government—of any ditch or water privilege, shall construct and secure the same in a proper and substantial manner, and maintain the same in good repair, and so that no damage shall occur during their ownership thereof to any road or work in its vicinity, from any part of the works of such ditch, water privilege or right giving way by reason of not being as aforesaid constructed, secured or maintained.†

The owners are liable to make good all such damages by any such works giving way, which can be recovered before a magistrate in a summary manner.‡

Whenever it is intended, in forming or upholding any ditch, to enter upon and occupy any part of a registered claim, or to dig or loosen any earth or rock within four feet of any ditch not belonging solely to the registered owner of such claim, three day's notice in writing of such intention must be given before entering or approaching within four feet of such other property; if the owner of such property considers three day's notice insufficient for taking proper measures of precaution, or if any dispute arise, the matter is to be immediately referred to the Gold Commissioner, who has power to make such order as he shall see fit.†

The owners of any ditch or water privilege may sell and distribute the water, conveyed by them, to such persons and on such terms as they may deem

*Rules Sept. 29, 1868, sec. 8.

†b. sec. 9.

‡Rules Sept. 29, 1868, sec. 10. †Rules Sept. 7th, 1868, sec. 13, 14.

advisable within the limits mentioned in their application. But they are bound to supply water to all applicants, being free miners, in a fair proportion, and may not demand more from one person than from another, except when the difficulty of supply is enhanced. No person, however, who is not a free miner, is entitled to be supplied with water at all.*

In order to ascertain the quantity of water in any ditch or sluice, the following rules are laid down :

The water taken into any ditch shall be measured at the ditch head. No water shall be taken into any ditch except in a trough whose top and floor shall be horizontal planes, and sides parallel vertical plains, such trough to be continued for six times its breadth in a horizontal direction from the point at which the water enters the trough. The top of the trough to be not more than seven inches, and the bottom of the trough not more than 17 inches below the surface of the water in the reservoirs, all measurements being taken inside the trough and in the low water or dry season. The area of a vertical transverse section of the trough shall be considered as the measure of the quantity of water taken by the ditch.†

Every owner of a ditch or water privilege is bound to take all reasonable means for fertilising the water taken by him, and if he shall wilfully waste any unreasonable quantity, he shall be charged with the full rent as if he had sold it at a full price, and if he persists in such offence, the Gold Commissioner has power to declare all rights to the water forfeited.‡

*Rules Sept. 7th, 1859, sec. 11. †Rules Jan. 6, 1860, sec. 6.

‡Rules Sept. 7th, 1859.

If any person refuse or neglect to take within the time mentioned in his application, or any further time (if any) allowed for the completion of the ditch, the whole of the water applied for, he shall be deemed entitled only to the quantity actually taken by him, and the Gold Commissioner may make such entry in the register as shall be proper to mark such alteration in quantity, and may grant the surplus to any other person.†

Any person desiring to acquire any water privileges is bound to respect the rights of parties using the same water at a point below the place where the person desiring such new privilege intends to use it.‡

Any person desiring to bridge across a stream or claim or other place for any purpose, or to carry water through or over any land occupied by any other person, may be enabled to do so in proper cases, with the sanction of the Gold Commissioner, where due compensation by indemnity can be given.§

Every exclusive grant of a ditch or water privilege, on occupied or unoccupied creeks, is subject to the rights of such registered free miners as shall then be working, or shall thereafter work in the locality from which it is proposed to take such water.||

The Gold Commissioner has power, whenever he may deem it advisable, to order the enlargement or alteration of any ditch or ditches, and to fix what (if any) compensation shall be made by the parties

†Rules Sept. 7th, 1859, sec. 9.

‡ib., sec. 18.

§ib., sec. 19.

||Rules Feb. 24th, 1863, sec. 6.

to be benefitted by such alteration or enlargement.*
He has also power, upon protest being entered, to
refuse or modify any application or grant.†

CHAPTER VIII.

ON MINING DRAINS.

At least ten days clear notice, in writing, of every intended application for the grant must be given by the applicant or applicants, by affixing the same to some conspicuous part of the ground intended to be affected by such application, and a duplicate of such notice shall be given at the same time, or as near thereto as may be, to the Gold Commissioner.‡

Every application shall contain a statement of the extent and nature of the privileges sought to be acquired, and the maximum amount of drainage toll (if any) proposed to be charged for the use or benefit to be made or derived from the drainage works thereby proposed to be constructed.§

The Gold Commissioner, upon being satisfied that due notice has been given, is empowered to grant full license and authority to any free miner or miners, or company of free miners, to enter upon any lands for the purpose of constructing a drain or drains for the drainage of mining ground, and for that purpose to enter into an agreement or agree-

*Rules Feb. 24, 1863, sec. 8.

†Proclamation March 25th, 1863, sec. 6.

‡Ord. Feb. 1st, 1864, sec. 4. §Ib., sec. 2.

ments for a grant or license with any free miners.* He has also power to grant such rights of entry and taking toll, not however exceeding the maximum amount mentioned in the application, for such term of years not exceeding ten years, and to grant such powers of assessing, levying and collecting such sums of money, by way of drainage toll, from all persons using, or in the opinion of the said Gold Commissioner, benefitted by such drain or drains, and with, under and subject to such terms, conditions and restrictions as to him, in his discretion may seem just and reasonable.†

Every grant or license must contain covenants by the grantees to construct such drains and have the same in effective working order within a time certain to be therein named, and for keeping the same in thorough working order and repair, and if the grantees neglect to do so the Gold Commissioner has the power to order any inspection and, on complaint, to order any necessary repairs or alterations to be done, and if not then done, such repairs and alterations may be handed over by him for execution to any other person or person or company, being free miners; the costs thereof to be levied by sale of any part of the property of the grantees, including the tolls (but subject to the conditions of the grant or license under which the same is held,) and shall also contain covenants to make proper tap drains in a reasonable time for or into adjacent claims, or to suffer the parties desirous of such tap drains to make them themselves, in which case the parties so making and using such tap drains shall

*Ord. 1st Feb., 1864. sec. 1. †Ord. Feb. 1, 1864.

only be chargeable with one-half the usual rates of drainage or other proportion of toll, as the Gold Commissioner shall prescribe. And shall also contain all such other proper covenants and stipulations for ensuring the better construction, maintenance and repairs of the said drains and drainage works, and for the protection of owners of adjacent claims.*

Ever grant shall include a power to enter and make tap drains, but in the case of tap drains only three days previous notice, affixed as the manner before mentioned, is required.†

The Gold Commissioner alone (or if required by either party) with the assistance of a Jury of five free miners, may ascertain the amount of compensation for damage caused by any such entry or construction.‡

No such grant is to affect, limit or abridge the rights of her Majesty in or to crown lands;§ and no such grant or license shall be valid, unless it shall contain a reservation of the public rights of way and water.||

Any person refusing to obey any lawful order in relation to payment of toll or compensation, or to any drain or other matter that shall be required to be done under the Act, or under the grant or license, shall on conviction be liable to a fine not exceeding £50, or imprisonment not exceeding three calendar months.¶

*Ord. 1st Feb. 1864, sec. 5.

†Ord. 1st Feb. 1864, sec. 6.

‡Ord. 1st Feb. 7th, 1864, sec. 7.

§Ord. Feb. 7th, 1864, sec. 8.

||Ord. Feb. 7th, 1864, sec. 9.

¶Ord. Feb. 7th, 1864, sec. 10.

If the grantees desire to abandon their grants or licenses, they must give twenty clear days notice by affixing the same and delivering a duplicate in manner before mentioned.*

CHAPTER IX.

LEASES OF LARGER PROPORTION THAN CLAIMS.

Leases of any portion of the waste lands of the crown may be granted for mining purposes for such term of years and upon such conditions as to rent and the mode of working and as to any water privileges connected therewith or otherwise in each case as shall be deemed expedient by his Excellency the Governor.†

Applications for leases are to be sent in, in triplicate, to the Gold Commissioner having jurisdiction for the locality where the land desired to be taken is situate.‡

Every applicant for a lease shall at the time of sending in his application mark out the ground comprised in the application by square posts firmly fixed in the boundaries of the land and four feet above the surface, with a notice thereon that such land has been applied for, stating when and by whom, and shall also fix upon a similar post, at each of the nearest places where miners are at work a copy of such notice.§

*Ord. Feb. 7th, 1864, sec. 11.

†Proclamation 1859, sec. 11.

‡Rules Sept. 7, 1855, sec. 20.

§Rules Sept. 7, 1859, sec. 24.

34 LEASES OF LARGER PROPORTION THAN CLAIMS.

The applications must contain the name and address of the applicant at full length, and the names and addresses of two persons residing in British Columbia or Vancouver Island to whom the applicant is personally known, also a description accompanied by a map of the land proposed to be taken.*

Leases will not be granted for a longer term than ten years, or for a larger space than ten acres of alluvial soil (dry diggings), or half a mile in length of unworked quartz reef, or a mile and a half in length of quartz that shall have been attempted and abandoned by individual claim workers, with liberty to follow the spurs, dips and angles for two hundred feet on each side of the main lead or seam, or, in bar diggings, half a mile in length (if unworked) along the high-water mark, or a mile and a-half in length along the high-water mark where the same shall have been attempted and abandoned by individual claim workers.†

Leases of any land, alluvium or quartz, which shall be considered to be immediately available for being worked by free miners, as holders of individual claims, will not in general be granted, nor will they in any case where individual free miners are in previous actual occupation of any part of the premises, unless by their consent.‡

The leases must contain reservations for securing to the public rights of way and water, save in so far as may be necessary for the miner-like working of the premises thereby demised, and also for preventing damage to the persons or property of other

*Rules Sept. 7, 1859, sec. 20.

†Rules Sept. 7, 1859, sec. 21.

‡Rules Sept. 7, 1859, sec. 22.

parties than the lessee ; the premises will be granted for mining purposes only, and the lessee cannot assign or sublet the same without the previous license in writing of the Gold Commissioner.*

Leases must also contain covenants to mine in a miner-like manner, and also, if thought necessary, to perform the works therein defined within a time limited ; and also a clause by which the lease may be avoided in case the lessee refuse or neglect to observe and perform the covenants.†

Objections to the granting of any such lease must be made in writing, addressed to His Excellency the Governor, under cover, to the Gold Commissioner, who will forward the same, with his report thereon.‡

Every application for a lease must be accompanied by a deposit of £25, which will be refunded if the application be refused.§

CHAPTER X.

ON MINING COPARTNERSHIPS.

All mining copartnerships are governed by the following provisions, unless they have other and written articles of copartnership, properly signed, attested and recorded.||

No mining copartnership is to continue for a larger period than one year, but such copartnership

*Rules 7th Sept., 1859, sec. 23.

†Rules Sept. 7, 1859, sec. 23.

‡Rules Sept. 7, 1859, sec. 25.

§Rules Sept. 7, 1859, sec. 26.

||Ord. 1864, sec. 29.

may be renewed at the expiration of each year.*

The business of such copartners must be confined to mining, and such other matters as pertain solely thereto.†

A majority of the copartners, or their legally authorised agents, may decide the manner of working the claims, the number of men to be employed, and extent and manner of levying assessments to defray the expense of working the claims, and all other matters pertaining thereto, provided that such company's claims be represented according to law. Such majority may also choose a foreman, or local manager, who shall represent the company, and have power to bind such company by his contracts, and sue and be sued in the name of the company for assessments and otherwise; and every such partnership must register its partnership or company name.‡

Assessments levied during the time of working must be paid within ten clear days after each such assessment.§ And any party failing or refusing to pay the same, after having received notice thereof, specifying the amount due, during the period such party may be delinquent, is personally liable to his copartners for the amount, and such amount having been ascertained by a court of competent jurisdiction, his interest in the company's claims may be sold for the amount due, with interest (if any) and costs.||

Notice of such sale of such delinquent's interest, or so much thereof as shall suffice to pay the amount

*Ord. 1864, sec. 30.

†Ord. 1864, sec. 31.

‡Ord. 1864, sec. 32.

§Ord. 1864, sec. 33.

||Ord. 1864, sec. 34.

due, with interest and costs, must be published by advertisement in some newspaper published in the district, for ten days prior to the sale, but if there is no such newspaper, then notices of such sale are to be posted, for the same length of time, in the vicinity of the claim or interest to be sold, and at the Court House nearest thereto; and such sale must be by public auction, to the bidder offering to pay the amount due for the smallest portion of the said claim or interest. The purchaser at such sale shall, on payment of the purchase money, acquire all the right, title and interest of the delinquent, and shall be entitled to the immediate possession thereof.*

All disputes concerning partnerships in any mine or claim may be investigated, in the first instance, before the Gold Commissioner having jurisdiction as aforesaid, without any limit to the value of the property or subject matter involved in such dispute.†

Section 8 of the Ordinance of 1864 (26th Feb.), gives the Gold Commissioner power to decide all mining copartnerships, irrespective of amount, but leaves untouched that section of the Proclamation of 1859‡ giving the power, in case of any dispute between partners, in any claim, ditch, mine or water privilege, where the joint or partnership stock shall be shown not to exceed £200, but not in other cases to decree a dissolution of partnership and a sale or valuation or division of partnership stock, and to direct the partnership accounts to be taken before himself, and declare what amount, if any, is due on the whole account by one partner to another, and

*Ord. 1864, sec. 35. †Procl. 1859, sec. 16.

‡Section 25.

generally to make such order and give such directions therein as he shall think fit, and to take such steps as he may deem expedient in the way of taking security or appointing a receiver, or otherwise for securing the partnership property in the meantime. Though this clause seems confined to the winding up of copartnerships alone, it is to be regretted that the power was not extended under this section also.

Miners of the age of sixteen years, but not under, can become copartners.*

CHAPTER XI.

ON REGISTRATION.

All persons holding any claims, ditch or water privileges must register the same at the office of the Gold Commissioner who will record in a tabular form in a book, or books, to be kept by him, the name of the holder, the name of the mine, and all such further particulars as may by any valid By-law, for the place or district where the same may be situate be required ; such registration is valid for the space of one year and no longer.†

Every free miner is allowed three days in which to record his claim by pre-emption after the same has been located, if such claim shall be within ten miles of the Gold Commissioner's office ; if more than ten miles from it, then an additional day shall

*Ord. 1864, sec. 28.

†Proclamation 1869, sec. 6.

be allowed for every additional ten miles or fraction of ten miles, as the case may be.*

The registration of claims must be in such manner and form as the Gold Commissioner may in any locality direct, and must include all such matters as the Gold Commissioner thinks fit to include.†

No transfer can be enforced unless the same or some memorandum thereof is registered.‡

The Commissioner can refuse to record any hill or tunnel claim on any creek which shall include or come within three hundred feet of any gulch or tributary of such creek §.

Bed-rock flume companies must register their claims in the same manner as individual free miners.||

The free miner's certificate of every applicant must be produced previously to recording a claim or interest.¶

No claims located and recorded in any district within fourteen days after the claims thereon shall have been laid over, shall be allowed or deemed to be so laid over unless so much work shall have been *bona fide* expended thereon by the holders thereof as shall fairly entitle them to have such claim laid over.**

This section is rather a puzzle as to its meaning or as to its usefulness, as it seems confined to fourteen days after the laying over.

*Ord. 1864, sec. 43.

†Rules Sept. 7, 1869.

‡Rules Sept. 7, sec. 6.

§Ord. 1864 sec. 7.

||Ord. 1864, sec. 23.

¶Ord. 1864, sec. 38.

**Ord. 1864, sec. 42.

An assignment of a deceased miner's interest by the Gold Commissioners is required to be registered as if such miner had made the same before his death,* and a purchase, under an order of sale to pay assessments, will no doubt have to be so, as there can be little doubt that the clause declaring that no transfer shall be enforced unless registered would be held to apply.†

The fees on the registration of any sale, mortgage, transfer or other disposition of any claim, ditch, flume, water privilege or any separate interest therein respectively when the price or consideration or value of the property disposed of is £100 or under, is the sum of one pound and six pence, and for every £50 or fraction of £50 over £100, the additional fee of ten shillings and three pence, is to be taken at the time of each registration.‡

For every record, whether of leave of absence granted, or any matter or thing relating to mining, and for which a special fee shall not have been provided, a registration fee of ten shillings and six pence is to be taken, but for every search of a record only four shillings and two pence.§

Upon every registration or re-registration or record of any claim a fee of ten shillings and three pence is to be taken.||

Every copy or extract from any record or register kept by any Gold Commissioner, and certified to be a true copy or extract under his hand, or other person authorised to take or keep such record or register, shall, in the absence of the original register, be

*Ord. 1864, sec. 48. †Rules Sept. 7, 1859, ante. ‡Ord. 1864, sec. 61.

§Ord. 1864, sec. 39. ||Proclamation March 25, 1863, sec. 9.

receivable in any judicial proceedings as evidence of all matters and things therein appearing.*

Any person who shall wilfully and maliciously damage, destroy, or falsify any of the records, and registers shall be guilty of felony, and is liable to penal servitude for not more than ten years.†

In case of any dispute the title to claims, leases of auriferous earth or rock, ditches or water privileges, will be recognised according to the priority of registration, subject only to any question which may be raised as to the validity of any particular act of registration ‡.

As regards the fees for recording the sale or transfer, where part of the consideration consists of a sum to be paid, *when taken out*, it is impossible to say whether the full fees will be taken on that sum or no; but there is no doubt, in equity, it ought only to be in the intrinsic value of the amount at the time of the sale. *Latin text and marginalia*

Mining copartnerships must register their partnership or company name.§

CHAPTER XII.

ON THE REPRESENTATION AND ABANDONMENT OF CLAIMS.

Every mining claim must be represented either by the free miner himself or some other in his stead, except under the circumstances hereafter mentioned.

*Ord. 1864, sec. 64. †Procl. 1859, sec. 39.

‡Procl. 1869, sec. 8. §Ord. 1864, sec. 39.

However, where a free miner has disposed of a half or other less interest it is not requisite that such interest should be represented separately it will be sufficient if the whole claim whether divided amongst two or more be represented by one miner.

The representation must however, be *bona fide* and not a colorable working.*

As to what is the precise meaning of a *bona fide* and not colorable working it is somewhat difficult to define. The decisions of the Gold Commissioner during last season left the law in a very unsatisfactory state, and the issue of some rule for the guidance of the miner would be of advantage.

The following species of work, though not strictly within the definition of mining work are subjects which have been laid down as *bona fide*:

1. Clearing brush from the claim.
2. Building log huts or cabin.
3. Cutting lumber for wheel, shaft or other work at a distance from the claim itself.
4. The time engaged in fetching provisions and other requisites for the use of the miners, and also materials for mining purposes.

Where claims are worked in copartnership the majority may decide the manner of working and the number of men to be employed, they must, however keep the number of claims fully represented according to law.†

It is the usual course to have every individual claim in a set of claims represented by one miner, but the Gold Commissioner has the power vested in him to regulate what number of miners shall be

*Proclamation March 25th, 1863, sec. 3. †Ord. 1864, sec. 32.

employed in prospecting until gold in paying quantities shall have been discovered, after which the full number of authorized miners must be employed on the claims.* This seems confined to tunnelling and sinking and it is apprehended that it does not include the claims worked by sluices or fluming, so that the whole of the claims in these companies will have to be represented.

As to the abandonment of claims, a claim or mine shall be deemed to be abandoned and open to the occupation of any free miner when the same shall remain unworked for the space of seventy-two hours, unless in case of sickness, or unless before the expiry of such seventy-two hours a further extension of time be granted for enabling parties to go prospecting or for such other reasonable cause.†

The laying over of claims through the owner not being able to work the same for lack of water, or through being troubled with too much water, and some other causes, have been allowed, upon proof thereof, to be good and reasonable causes for laying over the claims. A certificate for this purpose is granted by the Commissioner which must be recorded, for which a fee of ten shillings and sixpence is charged.‡

Private flume companies are required before giving up their claims to give notice to the bed-rock flume companies.§

All claims are held subject to the conditions as to forfeiture, working representation, registration and

*Rules Feb. 24th, 1863, sec. 2.

†Rules 7th Sept. 1869, sec. 12.

‡Ord. 1864, sec. 39.

§Ord. 1864, sec. 25.

otherwise for the time being in force with respect to such claim or interest under any law or rule regulating the same, and *every such forfeiture is absolute*, any rule of law or equity to the contrary notwithstanding.*

This rule is of more importance than to a casual observer might appear, as it renders it requisite, if through inadvertance or negligence, any such forfeiture should occur to re-record and re-register in order to secure a good title.

Mining Drain and Water Co.'s can abandon their respective properties upon giving the notices mentioned in the respective chapters on those heads.†

For the purpose of bed-rock fluming "abandoned ground" has been construed to include all new and unworked ground outside of claims worked upon any stream which may have been discovered and mined for two years or more.‡

CHAPTER XIII.

ON ROADS AND WORKS.

Any person engaged in the construction of any road or work may, with the sanction of the Gold Commissioner, cross, divert, or otherwise interfere, with any ditch, water privilege, or other mining right whatsoever.§ subject to paying compensation for damage or interference and replacing and re-

*Ord. 1864, sec. 45.

†Ante

‡Ord. 1864, sec. 14. §Rules Sept. 29, 1863, sec. 1.

pairing damage.* The Gold Commissioner's certificate that all requirements have been fulfilled, and of the damage done and of the payment for the same,† (which is to be recorded, and open to inspection on payment of two shillings;‡) is to be evidence in any court in the Colony, and discharge the persons to whom it is granted from liability for the damages therein mentioned.§

CHAPTER XIV.

MINING DISTRICTS.

The Governor of British Columbia may, from time to time, by any writing under his hand, published in the Government Gazette, erect any portion of the Colony into a mining district, and give such district as distinguishing name, and define the limits and boundaries thereof, and also may again abolish and reconstruct such district, and from time to time alter and vary the limits and boundaries.||

Such mining districts are free and open to all persons engaged in mining or searching for precious metals, subject to the provisions of the Gold Fields Act, passed the 31st day of August, 1859, and the subsequent Proclamations and Rules.¶

*Rules Sept. 29, 1863, sec. 2. †Ib., sec. 3. ‡Ib., sec. 4. §Ib., sec. 5.

||Proclamation 27th May, 1863, sec. 1. ¶Ib. sec. 3.

CHAPTER XV.

THE GOLD COMMISSIONER.

The Gold Commissioner is appointed by his Excellency the Governor; he exercises, during his term of office the authority and jurisdiction of a Justice of the Peace for the Colony in addition to his proper authority as such Commissioner.*

He has full jurisdiction over all disputes relating to the title to any mine or claim, or to any part of the proceeds thereof, or relating to any ditch or water privilege, mine or claim, or relating to the mode of carrying on the same, or any of them, and all disputes concerning partnership in any mine or claim, without any limit to the value of the property, or the property or subject matter involved in such dispute.†

He has also jurisdiction as to disputes regarding boundaries or the encroachment on claims or other mining property, and to restore the property so encroached upon and the gold taken therefrom, and also to award such damages as the nature of the case may require.‡

He has also jurisdiction over all disputes relating to contracts for labor (including all wages due workmen and others) done in respect of any ditch or water privilege, mine or claim, or relating to the mode of carrying on the same.§

He has power when the joint-stock of a co-parter-

* Proclamation 1859, sec. 15.

† Proclamation 1859, sec. 16.

‡ Proclamation 1859, sec. 26.

§ Proclamation 1859, sec. 16.

ship does not exceed £200 to decree a dissolution of partnership, appoint a receiver and take all other necessary steps for winding up the same.*

He has also the like jurisdiction in all disputes relating to bed rock flumes and mining drains.

He has power to try all persons charged with any offence against any Proclamations, Rules or Regulations.

He records all claims and makes all grants to companies or private individuals requiring ditch and water privileges, bed rock flume and mining drain rights and privileges; records all deeds, certificates and other documents; he assesses all damages, and orders the mode of collecting the same; he has charge of deceased miners' claims; he marks out all plots of ground for trading or gardening purposes.†

He, without a jury, is alone the sole judge of law and fact.‡ He has power to cause such parties and witnesses as he shall think proper to attend on any proceedings before him, and to compel the production of documents in any such proceedings.§

He has power, in case of dispute as to boundary or measurements, to employ a surveyor to fix and mark the same, and to cause the expense thereof to be paid by either of the parties interested in the question at issue as he shall deem fair and just.||

Where any ditch or water privilege is situate partly within his jurisdiction and partly not, it shall be deemed to be wholly within; and the Gold Com-

* Proclamation 1859, sec. 25.

† Proclamation 1859, sections 27, 28. ‡ Ib., section 22.

§ Procl. 1869, sec. 23.

|| Rules Feb. 24th, 1863, sec. 8.

missioner within any district in which the same is partly situate has full jurisdiction to act.*

An appeal is granted from his decision where any person is convicted of any offence against any Proclamation, Rule or Regulation and sentenced to any term of imprisonment beyond thirty days, or to pay a fine above £20, over and above the costs of summary conviction, to the next assizes to be holden for the district or place wherein the cause may have arisen; provided such person enter into recognizances, with two sufficient sureties, conditioned personally to appear to try such appeal, and to abide the further judgment at such assizes, and to pay such costs as shall be by such last mentioned court awarded; and the convicting Gold Commissioner may bind over any witnesses or informant, under sufficient recognizances, to attend and give evidence at the hearing of such appeal.† No objection will be allowed to the conviction on any matter of form or insufficiency of statement.‡

Penalties for the infraction of the Gold Laws may, if deemed proper, be ordered to be recovered by sale and distress to be levied forthwith, or at any convenient interval after conviction and non-payment within so many hours, or such longer time as shall be allowed, by distress and sale of any claim or ditch, or any personal property whatsoever, of the person on whom such penalty may have been imposed.§

An appeal is allowed in civil cases, if either party where the subject matter in dispute is more than

*Proclamation 1859, sec. 15.

†Procl. 1859, sec. 18. ‡Ib., sec. 19.

§Rules Feb. 24, 1863, sec. 6.

£20, shall be dissatisfied with his determination, to the Supreme Court of Civil Justice, provided that the appealing party shall, within four days of the determination appealed from, give notice of such appeal to the other party, and also give security, to be approved by the Gold Commissioner, for the costs of the appeal, and also for the amount payable by the appealing party under the judgment appealed against. And the said court of appeal may either order a new trial, on such terms as it shall think fit, or order judgment to be entered for either party or try the cause *de novo*, and may make such order as to the costs of the appeal as such court shall think proper, and such appeal may be in the form of a case, settled and signed by the parties and their attorneys, and if they cannot agree, the said Gold Commissioner may settle and sign the same upon being applied to by the parties or their attorneys.*

In case of any cause relating to a mine, claim or ditch being brought in the first instance before the Supreme Court, wherein the damages sought to be recovered shall be less than £50, the court, after issue joined, may direct such cause to be tried before any Gold Commissioner whom the court may name, and upon such terms as the court shall think fit.†

It is not necessary for the Gold Commissioner in any proceedings before him to follow any set forms, provided that the substance of the things done and to be done be therein expressed; nor shall any proceedings be liable to be set aside for any want of form, so long as matters of substance have not been omitted.‡

* Procl. 1869, sec. 20, ¶ 1b., sec. 21.

‡ Procl. 1869, sec. 24.

The Gold Commissioners constitute Mining Boards. They take the votes and are the returning officers; and fill by appointment all vacancies in Mining Boards when the same may occur.*

CHAPTER XVI.

MINING BOARDS.

Upon petition signed by not less than one hundred and one free miners in any district, such miners having been three months on the register and upon a certificate from the Gold Commissioner of such district testifying to the number and good faith of the petitioners, his Excellency the Governor may by a notification under his hand and seal direct the Gold Commissioner acting in and for such district to constitute therein a local board to be called the Mining Board.*

The Mining Board shall consist of not less than six nor more than twelve, of the general body of the voters in such district, according to the following scale, namely: if there shall be not more than one hundred and fifty voters, then the Mining Board shall consist of six members; and for every number of fifty voters beyond one hundred and one, the Mining Board shall comprise one additional member, but not so as to consist of more than twelve. The members are to be elected by the votes of registered free miners of the district, who have been

* Procl. 1865, sec. 29. Ord. 1864, sec. 2.

* Proclamation 1869, sec. 29.

three months on the register, each voter to have the number of votes there are members to be elected.*

The votes of electors must be given by word of mouth and in person. The Gold Commissioner of the district is to be the receiver and examiner of votes and the Returning Officer.†

The Mining Board shall meet at such times as a majority shall decide, and one half the members shall constitute a quorum. The Gold Commissioner may, however, when and so often as in his opinion occasion shall require, call together such Mining Board.‡

If any member shall cease to be a registered free miner in the district, or shall be convicted of any misdemeanor or felony, or of any assault being armed with a lethal weapon, or of any wilful and malicious contravention of the Proclamations, Rules and By-laws in force in any district, he shall, *ipso facto*, vacate his seat, and not be re-eligible, save that a member vacating his seat only by reason of his ceasing to be a registered free miner, shall be again eligible on his again becoming entitled to vote.§

Three members of the Board, or so many members as together with vacancies caused as aforesaid shall make up three members, shall retire annually by lot, or agreement, or seniority; retiring members shall be immediately re-eligible.||

The Gold Commissioner shall fill, by appointment, all vacancies which may arise in the said Board,

* Procl. 1859, sec. 31.

† Procl. 1859, sec. 31.

‡ Ord. 1864, sec. 1.

§ Procl. 1860, sec. 32. || Ib., sec. 30.

and when the same may occur ; and such appointees shall hold office until the next general election.*

The general election of the members of the board shall be held on such a day in each year as the Gold Commissioner in each district shall appoint.†

The Mining Board have power, by resolution, to make By-laws, and also from time to time to alter and repeal any existing By-laws for regulating the size of claims and sluices, the mode in which claims may be registered, worked, held, and forfeited, and all other matters relating to mining matters in their district ; provided that no such By-law, repeal or alteration shall be of any force unless approved by His Excellency the Governor.‡

Such by-law, repeal or alteration being duly made and approved, and not being contrary to the statute or common law, and not being contrary to natural equity, shall be admitted in all courts in British Columbia as a good local law ; and a copy thereof extracted from the by-laws, and purported to be signed by the Gold Commissioner of the district, shall be good evidence thereof, and that the same have been lawfully made and were in full force at the time in such copy or contract in that behalf specified.§

Any resolution of such Mining Board may be passed by a bare majority of the members of such board, if the Gold Commissioners shall consent thereto, or by two-thirds of the members of such board if the Gold Commissioner shall not consent

*Ord. 1864, sec. 2.

†Ord. 1864, sec. 2.

‡Procl. 1859, sec. 34.

§Procl. 1859, sec. 34.

thereto ; the Gold Commissioner shall, within seven days of the passing of any resolution concerning any by-law or general regulation, which he shall on any grounds deem expedient to lay before His Excellency the Governor, make and send to His Excellency a fair copy thereof, signed by such Gold Commissioner, with his opinion thereon.*

The votes on all resolutions of the Mining Board shall be given by the members personally and by word of mouth.†

All questions of order and of the time and manner of conducting the business at such Mining Board, and of the times and places of meeting, after the first meeting thereof, and of the propriety of elections and qualifications and disqualifications of members, are to be decided by the majority of such board, either from time to time, as any question may arise, or by any fixed rules or orders, as may be thought advisable, and which such majority are authorised to make by writing under their hands.‡

His Excellency the Governor, by an order, under the public seal of the colony, may at any time declare the Mining Board in any district dissolved, as from a day to be named in such order ; and if no day be therein named in that behalf, then as from the date of such order. And from and immediately after such dissolution, the power to make and repeal by-laws and regulations shall immediately be vested in the Governor, in the same manner as if such mining board had never been constituted. All by-laws and working rules and regulations, and all other acts made, done and established in the meantime to

*Procl. 1859, section 35. Ib., section 30.

†Procl. 1859, section 36.

be valid, until the same be altered or repealed by the Governor, by some order under the public seal of the colony.*

*Proclamation 1859, section 37.

CHAPTER XVII.

ON THE DEFINITION OF MINING WORDS.

The following expressions are to have the following interpretation, unless there be something inconsistent or repugnant thereto in the context :

“The Governor,” shall include any person or persons for the time being lawfully exercising the authority of a Governor for British Columbia.†

“The Gold Commissioner,” shall include the assistant Gold Commissioners and Justices of the Peace acting as Gold Commissioners, or any other person lawfully exercising the jurisdiction of the Gold Commissioner for the locality referred to.‡

The word “Mine,” shall mean any bar or separate locality, in which any vein, stratum or natural bed of auriferous earth or rock shall be mined.§

The verb “to mine,” shall include any mode or method of working whatsoever whereby the soil or earth or any rock may be disturbed, removed, washed, sifted, smelted, refined, crushed, or otherwise dealt with, for the purposes of obtaining gold, and whether the same may have been previously disturbed or not.||

†Proclamation 1859, section 1. †Ib.

‡Proclamation 1859, section 1. ||Ib.

"Claim," shall mean, in speaking of individual persons, so much of any mine as by law may belong or be alleged to belong to the individual spoken of; and in speaking of any partnership, so much of any mine as may by law belong or be alleged to belong to the persons of whom the partnership shall exist, but shall not extend to a lease of auriferous land.*

"Free Miner," shall mean a person named in and lawfully possessed of an existing valid free miner's certificate.†

"Registered Free Miner," shall mean a free miner registered as entitled in his own right to any claim, lease of auriferous earth, ditch or water privilege.‡

And words in the singular number shall include the plural, and the masculine gender shall include the feminine gender.§

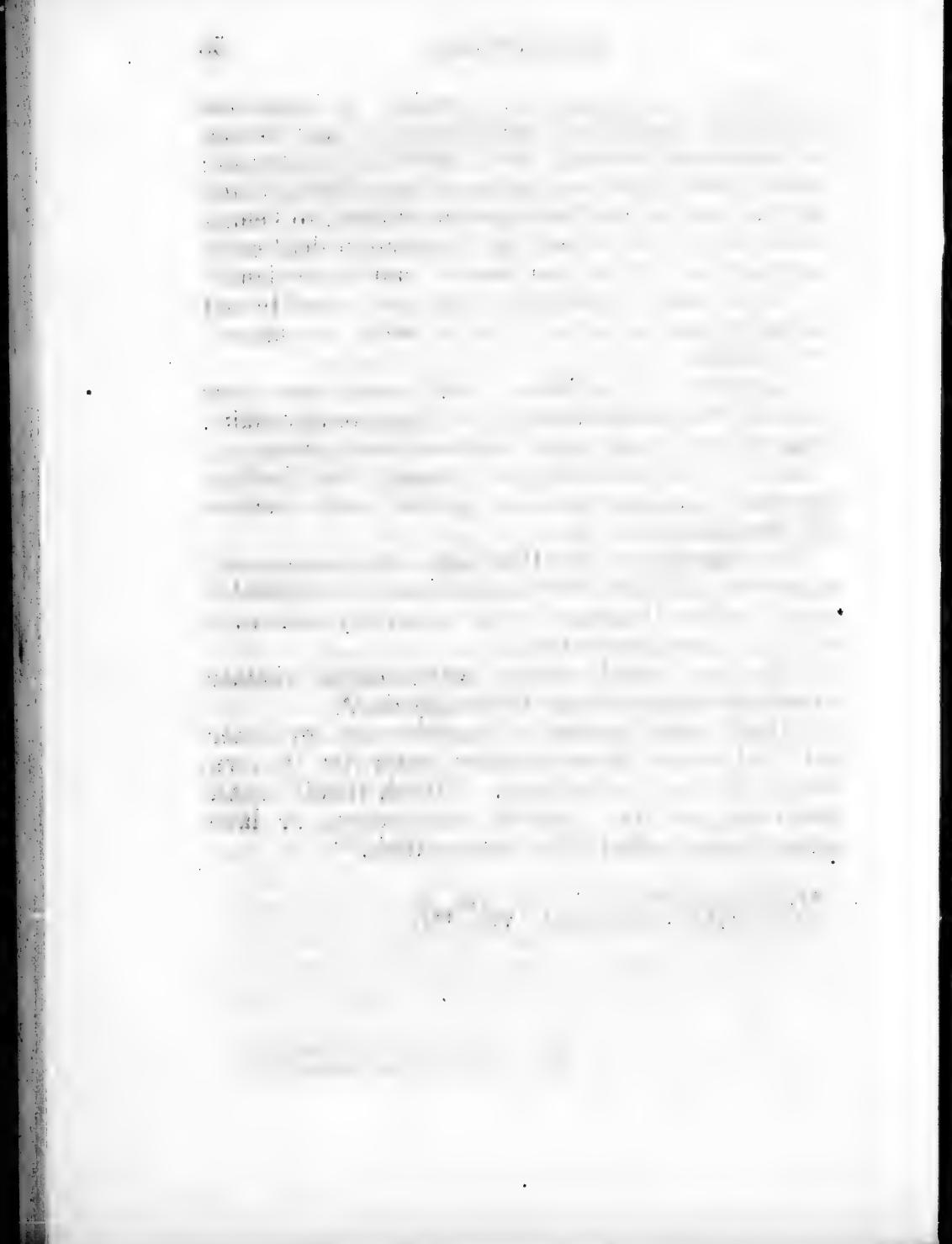
The expression "Bar Diggings," shall mean every mine over which a river extends in its most flooded state. "Dry Diggings" shall mean any mine over which a river never extends.||

"Ravines," shall include watercourses, whether usually containing water or usually dry.¶

"Ditch," shall include a flume or race, or other artificial means, for conducting water by its own weight into or upon a mine. "Ditch Head," shall mean the point in a natural watercourse or lake where water is first taken into a ditch.**

*Proclamation 1859, sec. 1. †1b. †1b. §1b.

||Rules Sept. 7, 1859, section 1. ¶1b. **1b.



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